

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

December 11, 2009

180-Day Exp. Date: January 19, 2010

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Conservation District Use Application (CDUA) HA-3518
for Kuleana Land Use Single Family Residence & Related
Improvements

**APPLICANT/
LANDOWNER:** Keith and Cynda Unger/
McCandless Land & Cattle Company, LLC (McCandless)

LOCATION: Kalahiki, South Kona, island of Hawaii
TMKS: (3) 8-6-014:012 and portion of (3) 8-6-011:003

AREA OF PARCEL Approximately (\approx) 0.2 acre/ 8,712 ft²

USE: \approx 2,256.34 ft²

SUBZONE: Limited

DESCRIPTION OF AREA AND CURRENT USE

The ahupuaa of Kalahiki exists on the Kona side of the island of Hawaii on the western, coastal flank of Mauna Loa within a sub region traditionally known as *Kapalilua* translated as “the two cliffs” as this descriptive term refers to the prominent coastal bluffs of the area. *Kalahiki* means the sunrise (**Exhibit 1**).

According to the application, Kalahiki was once a village containing \approx three-four hundred inhabitants. There were 19 *kuleana* awarded in the coastal area of Kalahiki. Subject parcel (3) 8-6-014:012 also defined as Land Commission Award 9746-C:1 is a house lot awarded to Anae in 1847 (Royal Patent No. 3676). An archeological survey of the parcel discloses that the parcel was actually used for residential purposes (**Exhibit 2 & 3**).

By 1919, the general area was used as free-range pasture by McCandless. The ranch operations were primarily focused on trapping “wild cattle” that had proliferated on the land. In the 1930’s, the village of Kalahiki had a couple of Hawaiian families still living there, by the 1940’s, residences were no longer occupied on a year-round basis.

According to the applicant, this area receives 40-50 inches of rain annually with a mean annual temperature of 80° F. The Flood Zone interpretation by the County of Hawaii's Department of Public Works (DPW) interpreted this area to be in Flood Zone X, areas outside the mapped 500-year floodplain (**Exhibit 4**). The volcanic hazard is assessed at 2 on a scale of 9-1 with 1 being the highest hazard risk, due to the fact that the subject area is found adjacent to and down slope of the active volcano, Mauna Loa. In terms of seismic risk, the entire island is rated Zone 4 meaning that areas are at risk from major earthquake damage.

The property lies adjacent to a wide basalt shoreline shelf with a storm-deposit beach. The coastal shelf contains pecked basins with a water-worn coral and rock rubble berm between it and the property. According to the applicant, the wide pahoe-hoe shelf bordering the project site currently protects the property from hazardous waves.

The site has been described as rough, broken land containing stone and rock outcrops, beach sand, coral and water-worn cobbles. The project area does not appear to be subject to subsidence, landslides or other forms of mass wasting. McCandless Ranch principal, who has been familiar with the area for over 70 years is not aware that the property has ever been inundated as a result of high storm waves or tsunami. Although at most times the edge of the water is about 100 yards from the property boundary, during times of high waves and high tides, coral rubble, sand and basalt cobbles are deposited much closer. The lot is fairly level. The shoreline fronting the property is located at the southwest corner and approximately 15-feet makai of the northwest corner (**5, 6& 7**).

The property is presently vacant and unused is bounded by a privately-owned parcel that appears to be a *kuleana* on one side and partially enclosed by another (8-6-011:003). There is no development adjacent to the parcel. The *kuleana* is in a fairly isolated area in the middle of ranch land utilized for grazing cattle and accessible overland by a series of gated private ranch roads available to the owner and owners of the various *kuleana* and other small lots in Kalahiki.

Existing structures on the lot consist of crumbling remnants of dry stack walls associated with earlier habitation. The lot does not appear to have been previously graded. Archaeological surface features existing on the study parcel include three formerly stacked core-filled walls that are now mostly collapsed. There is no wall on the makai side of the study parcel (**See Exhibit 3**).

This *kuleana* house lot has been recorded and is identified as part of a larger State Site Complex (50-10-56-4200) that represents a large number of features along the coast in Kalahiki that include cave burials, Kahauwawaka Heiau and numerous other features including enclosures along the coast. An archaeological data recovery plan, preservation plan and a cultural impact assessment were performed for the proposed project. It is clear from the archaeological and historical record that the Kalahiki and Hookena area were used during precontact and early historic times for the entire range of traditional Hawaiian cultural activities and practices (residential, burial, ceremonial, subsistence production and procurement).

According to the applicant, vegetation on the site is dominated by non-native species including kiawe, opiuma, koa haole and Christmas berry. Coconut, Noni, Milo and Uhaloa are also found on the project site. Indigenous species include Pohuehue (Beach morning glory) and Uhaloa. All native plants on the property are common.

Avifauna observed at the site or expected to be found in the locality are introduced and include the Myna, Northern Cardinal, Yellow-billed Cardinal, Yellow-fronted Canary, Spotted Dove, Japanese White-eye, Gray Francolin and House Finch. No native birds were identified during the survey. Common shorebirds such as the Koa, Ruddy Turnstone and Wandering Tattler were observed on the basalt shelf fronting the property. Migratory birds may fly over the area.

Mammals that may be found are introduced species including cats, dogs, mongoose, rats, mice and feral goats. The only native Hawaiian land mammal that may be in the general area as it is present in many areas on the island of Hawaii is the Hawaiian Hoary Bat. As the site is small and not heavily vegetated, it would not offer any substantial habitat for this endangered species that has been observed in kiawe vegetation in other parts of Kona.

There are no visible trails on the property or proposed driveway alignment. There appears to be a historic trail located along the makai side of the proposed project. This trail may be incorporated into the National Park Service's (NPS) Ala Kahakai Trail System that hopes to encourage local communities to manage trails in cooperation with NPS.

The area is accessed or can be viewed by the occasional hiker, by kayakers from the Hookena Beach Park and persons using ocean-going vessels. The property is not in sight of any community or neighbors. Like the subject property, the neighboring *kuleana* lots have not been used for residential purposes for many decades. There are no existing utilities and no proposed public utilities within the vicinity to service the project site. No parks, schools or other facilities are present nearby.

There is no beach suitable for landing a boat. Property owners of *kuleana* lots, McCandless Ranch and their guests regularly visit the beach at Kahahiki to fish, gather and enjoy the shoreline. The area is also used by fishermen and gatherers of opihi, limu, and other resources. Hikers and kayaker from Hookena may visit the shoreline.

PROPOSED USE

According to the application, the proposed residence is approximately (\approx) 2046-ft² consisting of 1403-ft² of interior space consisting of a kitchen, living & dining room, 2 bedrooms and a dressing room with 633-ft² of lanai and porch. A 10,000-gallon catchments water tank, a composting toilet, and a 9-ft²-building for generator storage are also proposed. The limited use of the residence will incorporate and practice water-savings measures whenever practical including integrating use of the "gray" water from the shower, kitchen and lavatories to irrigate sections of the landscaping that is proposed

to be the existing types of plants already found in the area such as coconuts, naupaka and tiare.

The proposed one-story residence appears to be of post and pier construction with no proposed cut and fill nor paved areas. Minor grading is proposed to level the lot. The SFR will be of a low profile and proposed to be no higher than 20 feet from grade. The residence will not be visible from public roads. The house will be painted in muted non-reflected tones and all exterior lighting will be shielded. Improvements are sited a minimum of 40-feet from the shoreline. According to the applicant, the proposed SFR will be constructed according to the standards outlined in Exhibit 4 (Single Family Residential Standards) of Chapter 13-5, Hawaii Administrative Rules and the County of Hawaii building code requirements (**Exhibit 8, 9 & 10**).

The project includes light grading of a driveway, \approx 250-ft long and no more than 15-feet wide, from an existing Ranch Road located on the surrounding parcel (3) 8-6-011:003. The grading of the driveway will occur in a vegetated area and will be of a short duration (3 days). The driveway, once completed, would be similar to the existing ranch roads that serve the area. The ranch, for close to a century has used roads similar to the existing ranch roads and the use has not contributed to any runoff, flooding or sedimentation in the area. The applicants are proposing to locate the driveway access to the mauka side of the property, at a considerable distance from the shoreline to ensure that access to and along the lateral shoreline trail will not be impacted and access to their property will be at a reasonable and safe distance from the shoreline area.

The owner is also proposing to repair the existing walls and build an additional wall on the mauka boundary of approximately the same height, width and composition (dry stack) as the existing walls. The owner may possibly remove the remains of one 'interior wall' and will rebuild/repair the existing boundary walls to a similar design, composition, height and width.

As the project area is remote and shall be set back at least 40' from the shoreline, the residence would not likely be visible from Hookena Beach Park nor would it have any impact on the scenic resources in the Hookena-Kauhako area. Existing vegetation will help to screen the structure.

No restriction of access or effects to the mauka-makai trails or lateral coastal or other trails are expected should the residence be approved. No effects on gathering, hunting or other uses by those claiming traditional and customary rights would occur. No impacts are expected to the potential Ala Kahakai National Historical Trail fronting the makai side of the lot should this trail be incorporated into the trail system.

According to the application, the applicant is favorable to a condition that would prevent any future request for shoreline hardening regardless of hardship related to protecting the residence, and a condition requiring moving or dismantling the home if sea level rise eventually threatens the integrity of the structure. The applicant has stated they have no intentions to utilize this residence as a rental.

Land clearing and construction activities would produce minor short-term impacts to noise, air and water quality and scenery. During construction there would be mitigation measures implemented to prevent soil erosion. To ensure that impacts are minimized, the contractor shall perform all earth work and grading in conformance with:

- *Storm Drainage Standards*, County of Hawaii, October, 1970, and as revised;
- Applicable standards and regulations of Chapter 10, *Erosion and Sedimentation Control* & Chapter 27, *Flood Control*, of the Hawaii County Code;
- Applicable standards and regulations of the Federal Emergency Management Agency (FEMA);
- Applicable standards and regulations for the Natural Resources Conservation Service and the Soil and Water Conservation.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: the **State**: Department of Health; Office of Hawaiian Affairs; Office of Environmental Quality Control; Department of Land and Natural Resources Divisions of: Conservation and Resource Enforcement, Forestry and Wildlife, Na Ala Hele, Hawaii District Land Office, and Historic Preservation; the **County of Hawaii**: Department of Planning, the Fire Department, Councilperson Guy Enriques and Kamaaina United to Protect the Aina (KUPA). In addition, the application and Environmental Assessment was also sent to the nearest public library, the Kealakeakua Public Library, to make this information readily available to those who may wish to review it.

Responses were received and have been summarized from the following agencies and the general public:

FEDERAL

UNITED STATE DEPARTMENT OF THE INTERIOR

National Park Service

The National Park Service (NPS) administers the Ala Kahakai National Historic Trail that was added to the National Trail system by the U.S. Congress on November 13, 2000 (Public Law 106-509). The legislation authorizing the Ala Kahakai NHT identifies an approximately 175-mile portion of prehistoric *ala loa*, and other trails on or parallel to the seacoast extending from Upolu Pt. to the east boundary of Hawaii Volcanoes National Park. Natural and cultural resources and landscapes are vital to the mission of the Ala Kahakai National Historic Trail. The maps presented in the EIS were general and this was done intentionally. The exact route on the ground is yet to be determined for much of the 175-mile trail corridor.

According to our records there are at least three trails located within the vicinity of the project's location. The ala loa that abuts the west side of TMK: (3) 8-6-014:012, the alanui aupuni or government road located on the upslope mauka of the property and a mauka-makai trail. These are important trails within Kalahiki. The trail abutting the west side of the subject kuleana lot would be an excellent addition to the National Trail System.

Please detail the applicant's best management practices to prevent herbicides, pesticides and fertilizers from blowing, flowing, washing or leaching into the ocean during and after construction.

The Ala Kahakai NHT is looking forward to working with the landowners and communities of Kalahiki, Hookena and greater South Kona to initiate managed access along this unique and fragile section of the Ala Kahakai NHT trail corridor.

APPLICANT'S RESPONSE

1. *Background on Ala Kahakai.* Thank you for acknowledging our efforts to include both general information of the Ala Kahakai's programs and goals and as specific information as possible regarding potential trail segments near the property.
2. *Best Management Practices.* Although construction of one residence is both unlikely to generate substantial environmental problems and is not suited to large construction BMPs, the applicants value the pristine setting at Kalahiki. As part of construction, they will require that their contractor implement the following practices:
 - a. The total amount of land disturbance will be minimized. Work will be limited to delineated construction areas within the kuleana and driveway areas.
 - b. The contractor will not allow any sediment to leave the site, particularly towards the ocean.
 - c. Unused materials and excess fill will be removed and disposed of at an authorized waste disposal site. The contractor will be encouraged to recycle excess material or donate for reuse as appropriate.
 - d. During construction, emergency spill treatment, storage, and disposal of all hazardous materials, will be explicitly required to meet all State and County requirements, and the contractor will be asked to adhere to "Good Housekeeping" for all appropriate substances, with the following instructions:
 - Onsite storage of the minimum practical quantity of hazardous materials necessary to complete the job;
 - Products will be kept in their original containers unless unresealable, and original labels and safety data will be retained;
 - Disposal of surplus will follow manufacturer's recommendation and adhere to all regulations;

- Manufacturers' recommendations for proper use and disposal will be strictly followed;
- Regular inspection by contractor to ensure proper use and disposal;
- Onsite vehicles and machinery will be monitored for leaks and receive regular maintenance to minimize leakage;
- All spills will be cleaned up immediately after discovery, using proper materials that will be properly disposed of;
- Regardless of size, spills or toxic or hazardous materials will be reported to the appropriate government agency;
- Should spills occur, the spill prevention plan will be adjusted to include measures to prevent spills from reoccurring and for modified clean-up procedures.

Should the National Park Service have additional BMPs that would be practical and useful for the proposed construction, the applicant welcomes them.

3. *Ala Kahakai working with the Ungers to preserve cultural and historical resources.* The Ungers welcome your offer of cooperation.

STATE OF HAWAII

OFFICE OF HAWAIIAN AFFAIRS (OHA)

OHA is concerned that the EA for this project does not contain an alternatives analysis. An EA should contain a rigorous and objective analysis of all reasonable alternatives to the proposed action, including a discussion of the "no action" alternative as a base-point to which the proposed action can be compared. The applicant should look at alternatives that consider factors such as different implementation methods and facility configurations.

We will rely on the applicant's assurances that should Iwi Kupuna or Native Hawaiian cultural or traditional deposits be found during the construction of the project, work will cease, and the appropriate agencies will be contacted pursuant to applicable law.

We appreciate the project will not impact Native Hawaiian traditional and customary rights, particularly those relating to accessing the ocean and gathering marine resources. OHA also supports the applicant's recommendation of a CDUP condition prohibiting the use of the proposed beach house as a bed and breakfast or vacation rental. We also appreciate that the applicant plans to use a shoreline setback that is double what the County of Hawaii requires.

Surface run-off from construction may harm Native Hawaiian traditional and customary practices conducted at neighboring beaches. Best Management Practices (BMP) should be observed and implemented prior to the start of construction and be maintained and monitored throughout the construction phase of the project.

APPLICANT'S RESPONSE

3. *Alternatives analysis.* Our understanding of Chapter 343, HRS and its implementing regulations do not lead use to the same conclusion about the requirement for in-depth alternatives analysis for a single-family home project. If an applicant desires to build a home on a property, there is no need to conduct an analysis that measures the impacts of various alternative uses, e.g., a park, a school, a shopping center, or a museum, unless the applicant truly envisions these as projects that he would want to implement.

Similarly, although there are an infinite variety of home styles, there is no reason to develop any number of home alternatives, unless the applicant is actually considering more than one design. As it is, the process requires an applicant to design a home that meets the exacting guidelines of the OCCL that mandate maximum size, height, placement of the structure on the lot, landscaping types, visually regulatory and environmental criteria to determine whether there are adverse impacts, with the No Action alternative always presented as the baseline.

If adverse impacts are identified, then the design is modified or mitigation measures put in place. In the case of the Unger's modest home, no adverse impacts were identified and the design meets all regulatory guidelines, and the proposed home is thus environmentally acceptable. It should be noted that the Unger's have incorporated sustainable practices into the design of the home, including a design that maximizes natural light and ventilation, utilized indigenous xerophytes vegetation, and uses a composting toilet and recycles grey water.

4. *Precautions in case of discovery of Iwi Kupuna, or Native Hawaiian traditional or cultural deposits during construction.* The applicant will diligently observe this condition during construction and afterwards.
4. *Runoff from construction on beach.* Best Management Practices are included in the response to National Park Services.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Division of Forestry and Wildlife (DOFAW)

No Comments

Na Ala Hele (NAH)

Na Ala Hele is aware of a historic trail located along the makai side of the proposed project. This trail has been documented on Land Commission Award # 9746C dated April 24, 1853. This coastal trail may eventually be incorporated into the Ala Kahakai National Historic Trail system.

We note the applicant acknowledges the historic trail and plan a 40' building setback from the certified shoreline. This will allow ample area for public pedestrian access along the coastal trail. Therefore Na Ala Hele has no objections to the proposed project.

APPLICANT'S RESPONSE

We note your acknowledgement and that Na Ala Hele has no objections to the proposed project.

Historic Preservation Division

August 13, 2009

The Archaeological Inventory Survey (AIS) has been returned for revisions in July. We do not anticipate a problem assuming our requested revisions are addressed. The AIS we reviewed is for the kuleana parcel only, and did not include the parcel intended for the driveway easement.

September 21, 2009

Excavations at the subject site, specifically kuleana parcel LCAw. 9746C:1 indicated that it was once a household site during the Post-contact period and it has been recommended as significant under criteria "d" and we concur with that assessment. Following excavations the recommendation has been made for no further work and we concur with that assessment.

Because the AIS does not indicate the location of one or more trials under review as part of the federal Ala Loa Trail System; the driveway proposed for the residence is described in the text as meeting an existing Jeep road but no road appears on the map showing the proposed driveway location, and due to the closeness of nearby parcels that are also kuleana awards, there is likelihood of encountering historic properties during construction. We are recommending that archaeological monitoring be conducted pursuant to §13-277, HAR. A monitoring plan should be prepared for review and acceptance by SHPD.

APPLICANT'S RESPONSE

Regarding your comment letter of August 13, 2009, the requested revisions were forwarded to SHPD on July 27, 2009. The AIS was not meant to cover the entire 156-acre parcel but instead to cover the roughly 250-foot by 15-foot wide area to be used for a driveway. There is discussion of the driveway in a number of sections within the AIS.

We trust that subsequent correspondence from SHPD related to the AIS can clarify the status of concurrence with the finding of no historic properties present or affected for the kuleana and the driveway portion.

Hawaii District Land Office (HDLO)

No Comments

Office of Conservation and Coastal Lands (OCCL)

Please discuss the proposed land use on TMK: (3) 8-6-011-003 in more detail. What is the width of this 250-foot long lightly graded driveway and how will it be constructed? Describe the survey work that was conducted to reach the conclusion that, 'no archaeological resources were identified in the proposed driveway alignment.'

As the applicant's responsibility includes complying with the provisions of Hawaii's Coastal Zone Management law that pertain to the Special Management Area (SMA) requirements administered by the various counties, please forward one of the following to our Office upon receipt: 1) An official determination that the proposal is exempt from the provisions of the county rules relating to the SMA; or 2) An SMA Use Permit for the proposed development.

APPLICANT'S RESPONSE

The driveway would be no more than 15-feet wide. Within the Archaeological Inventory Survey (AIS), the driveway is described on page 1. *"The proposed driveway corridor extends off the east side of the current study parcel for approximately 26 meters before turning south and extending approximately 50-meters at which point it meets up with an existing mauka/makai ranch road."*

Figure 2 on page 33 provides a map of the driveway corridor. The corners of the study parcel were clearly marked in the field with survey markers (pipe or nail in concrete) as was the driveway corridor. No archaeological resources were identified in the proposed driveway alignment.

Regarding Special Management Area compliance, the Final EA will report on the status of the SMA Use Permit or official determination of exemption.

COUNTY OF HAWAII

DEPARTMENT OF PLANNING

August 19, 2009

We have a general concern with the suitability of this location for a single-family dwelling. The site is in close proximity to various hazards including flood zones and tsunami inundation zones. While the applicant feels confident the these hazards will not affect them, the reality is that the proximity of the shoreline to the building site, and the propensity for hazards in this area, mean the likelihood of being impacted by one of these hazards during the expected 50 year life of the dwelling is high. This ultimately puts first responders in hazards way unnecessarily. In your Special Management Area Assessment (SMAA) application, discuss this potential impact of natural hazard in further detail.

October 21, 2009

Parcel 8-6-014:012 is located in the State Land Use Conservation district and is designated Open by the County Land Use Pattern Allocation Guide Map. According to

HRS 205 5(a), county zoning is not applicable due to the State Land Use Conservation District designation. The parcel is within the SMA and has frontage along the shoreline. The portion of parcel 8-6-011:003 pertaining to this SMA Assessment application is also located in the State Land Use Conservation district and designated as Open and Extensive Agriculture by the County Land Use Pattern Allocation Guide Map. The relevant portion of this parcel is located with the SMA.

According to Planning Commission Rules of Practice and Procedure, Rule 9-4(10) B(i) “development” does not include “*construction of a single-family residence that is not part of a larger development.*” Therefore, we have determined that the proposed construction of the single-family residence is exempt from the definition of “development.” This determination of exemption from the SMA definition of development for construction of the SFR is subject to compliance with stated conditions.

The grading of an access driveway across parcel 003 is not considered accessory as it occurs on a neighboring parcel and according to PC Rule 9-4(10)A(ii), “*Grading, removing, dredging, mining, or extraction of any materials*” is not exempt from the definition of development. Therefore, the grading of the access driveway this parcel requires a permit. Based upon the estimated cost of the driveway grading at \$1200.00, it has been determined that a Special Management Area Minor Permit is required. SMA minor permit No. 09-000130 is issued to allow for the grading of the access driveway through parcel 8-6-011:003. It is the applicant’s responsibility to comply with permit conditions.

GENERAL PUBLIC

There are areas on the McCandless Ranch that have been destroyed. Before the proposed construction project can proceed, these destroyed areas need to be taken care of first. It is important to note that a portion of the Ala Loa and mauka-makai trail was destroyed as a result of the bulldozing by McCandless Ranch. The destruction of these roads and trails are also the destruction of SMA lands, conservation lands, State and public lands.

This project should be put aside until the destroyed trails have been rebuilt and a preservation and management plan developed for their protection and preservation.

APPLICANT’S RESPONSE

The “destruction of historical sites in 2008” you allege apparently relates to an area located approximately one mile from the project site and does not relate to the proposed single family home and driveway. A number of State and County regulatory agencies were notified and formal investigations and at least one site visit has been conducted. We assume the responsible agencies will take whatever actions are appropriate, if any.

We note that the proposed driveway will help guide the residents and visitors to this kuleana off the shoreline that is presently used for a road.

GENERAL PUBLIC

My family owned two kuleana in Kalahiki, one mauka and one makai that I want to protect from any potential adverse impacts.

In the EA, the current subject parcel is identified as L.C. Aw 9746-C:1 to Auae. In the Indices of Awards the Awardee of the subject parcel is listed as *Anae*. This should be corrected to reflect accuracy and consistency.

Although the EA report states that the inventory survey performed for the property has properly documented and mitigated impacts to historic sites, I believe that this goal has not been met. Currently, the County is making inquiry to the reporting of bulldozing of historic sites, specifically the Ala Loa aka Alanui Aupuni or Government road within the SMA on McCandless Ranch property in 2008 without first obtaining an SMA permit. The inventory report does not mention the bulldozed historic sites nor does it provide any mitigation plans that address the impact on the bulldozed historic sites on TMK: (3) 8-6-011:003.

The EA report stated in its finding and supporting reasons that the proposed project will not involve an irrevocable commitment or loss or destruction of any natural or cultural resources. As per the County Planning Dept. letter, loss and/or destruction of historical sites have already occurred within the boundaries of the parcel 003 so this statement is illogical and invalid.

All parties involved were previously aware that the Ala Loa existed and that portions of it had been destroyed. Had McCandless Ranch obtained the necessary permits, and had Na Ala Hele taken action to save the Ala Loa and mentioned at a previous meeting, had the County of Hawaii taken action when they were first informed about the destruction of the Ala Loa back in 2002, and had SHPD taken action on the report of the destruction of the Ala Loa that they received in 2002 and in June 2008, we would not be where we are at today. The process we have to take now is at the expense of the taxpayers and at the expense of our cultural and historical sites. However, the County's July 7, 2009 letter has generated some positive action. An aerial inspection of the alignment of the Ala La and Ala Kahakai within the neighboring ahupuaa and Kalahiki may move forward in resolving the situation at hand.

The issue of the destruction of the Ala Loa that is located within the TMK: (3) 8-6-011:003 must be resolved before the proposed construction of the Unger residence in Kalahiki can even be considered.

APPLICANT'S RESPONSE

It is clear that your overarching concern is the protection of natural, cultural and historical resources in the area.

1. *Protection of Umauma Kalahiki parcel (TMK 8-6-014:009).* We acknowledge your interest and concern; no aspect of the project would appear to pose any impacts to this property.
2. *Misspelling of Auae on shoreline survey map.* Although the error is not material to the map or its use, we regret it. This map cannot be replaced.
3. *Historic sites goals in the General Plan.* In the context of the impacts related in any way to this project, which involves a single-family home and a short driveway, we believe that the historic and archaeological sites have been properly documented and the goals of the General Plan and similar plans have been fulfilled.
4. *Ala Loa.* The “destruction of historical sites in 2008” you allege apparently relates to an area located approximately one mile from the project site and does not relate to the proposed single family home and driveway. A number of State and County regulatory agencies were notified and formal investigations and at least one site visit has been conducted. We assume the responsible agencies will take whatever actions are appropriate, if any.

ANALYSIS

After reviewing the application, by correspondence dated July 23, 2009, the Department has found that:

1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to the Hawaii Administrative Rules (HAR) §13-5-22, P-3, KULEANA LAND USES, (D-1), Agriculture and a single family residence, if applicable, when such land use was historically, customarily and actually found on the property. Please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to §13-5-40 of the HAR, a Public Hearing will not be required; and
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact to the environment (FONSI) is anticipated for the proposed project.

The Department further noted that there are land claims that were awarded in the makai portion of Kalahiki ahupuaa during the Mahele. The subject parcel is also noted as Land Commission Award (LCA) 9746-C:1 identified as being a “pahale” or houselot. The applicant is well aware of the remoteness and limitations of the area.

It had been determined that satisfaction of the Special Management Area (SMA) has been met with documentation dated October 21, 2009, from the County of Hawaii stating that the proposed residence is not defined as development and is exempt from Special Management Area permit requirements. The access driveway has been issued SMA Minor Permit No. 09-0000130. In addition, a FONSI to the environment was published in the October 23, 2009 Environmental Notice.

CONSERVATION CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The project is an identified land use in the subject area of the Conservation District; as such, it is subject to the regulatory processes established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities. A Kuleana Land Use is an identified land use within the Limited subzone pursuant to HAR §13-5-22, P-3, KULEANA LAND USES, (D-1), Agriculture and a single family residence, if applicable, when such land use was historically, customarily and actually found on the property.

Pursuant to §13-5-37, HAR Nonconforming uses. (a) This chapter shall not prohibit the continuance of, or repair of non-conforming uses as defined. (b) Any land identified as a kuleana may be put to those uses that were historically, customarily, and actually found on the particular lot including, if applicable, a single-family residence. §183C-5, Hawaii Revised Statutes, further states that any structures may be subject to conditions to ensure they are consistent with the surrounding environment.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205A, HRS, entitled "Coastal Zone Management," where applicable.*

Staff believes the proposed project complies with provisions and guidelines of Chapter 205A, HRS regarding Coastal Zone Management as the proposed use would not affect public access to recreational areas, historic resources, scenic and open space resources, and coastal ecosystems. It has been determined that satisfaction of the Special Management Area has been met with documentation dated October 21, 2009 from the County of Hawaii which states that the proposed SFR is exempt from Special Management Area permit requirements and the

proposed accessory driveway has been issued Special Management Area Minor Permit (SMM 09-000130).

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

Staff believes the proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area or region. There may be short-term adverse effects on the surrounding area associated with construction activities such as potential noise and air quality.

According to the applicant, the proposed use should not restrict access or effects to the mauka-makai trails or lateral coastal or other identified trails should the residence be approved. No effects on gathering, hunting or other uses by those claiming traditional and customary rights would occur. No impacts are expected to the potential Ala Kahakai National Historical Trail fronting the makai side of the lot should this State trail be incorporated. Archeological monitoring shall be conducted during construction activities in accordance with an approved Archaeological Mitigation and Preservation Plan.

According to the application, the applicant is favorable to a condition that would prevent any future request for shoreline hardening regardless of hardship related to protecting the residence, and a condition requiring moving or dismantling the home if sea level rise eventually threatens the integrity of the structure.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The house shall be painted in muted non-reflected tones and all exterior lighting shall be shielded. Improvements shall be sited a minimum of 40-feet from the shoreline. According to the applicant, the proposed SFR shall be constructed according to the standards outlined in Exhibit 4 (Single Family Residential Standards) of Chapter 13-5, Hawaii Administrative Rules and the County of Hawaii building code requirements.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

As the project shall be set back at least 40' from the shoreline, the residence would not likely be visible from Hookena Beach Park nor would it have any impact on the scenic resources in the Hookena-Kauhako area. Existing vegetation will help to screen the structure.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

There will be no subdivision of land for this proposed project.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff believes the proposed land use will not be materially detrimental to the public health, safety and welfare. Staff has general concerns for the applicant regarding the shoreline location and remoteness of the area.

DISCUSSION

Staff notes the applicant is aware that there is no public infrastructure or services, there are no utilities, and the location is remote. Staff has a concern with placing any structure adjacent to the shoreline that is unpredictable and may be hazardous. Due to these factors, Staff has a concern for the applicant's safety and welfare. This is an isolated area with the potential for high coastal hazard events. Staff strongly recommends the applicants have an emergency plan in place should an expected coastal hazard event occur. Staff notes the applicant has long-term knowledge of the area and is aware of the remoteness and limitations of the area.

The applicant is favorable to a condition that would prevent any future request for shoreline hardening regardless of hardship related to protecting the residence, and a condition requiring moving or dismantling the home if sea level rise eventually threatens the integrity of the structure. The applicant has stated they have no intentions to use their home as a rental.

This kuleana house lot has been recorded and is identified as part of a larger State Site Complex (50-10-56-4200) that represents a large number of features along the coast in Kalahiki that include cave burials, Kahauwawaka Heiau and numerous other features including enclosures along the coast. It is clear from the archaeological and historical record that the Kalahiki and Hookena area were used during precontact and early historic times for the entire range of traditional Hawaiian cultural activities and practices (residential, burial, ceremonial, subsistence production and procurement). Archeological monitoring shall be conducted during construction activities in accordance with an approved Archaeological Mitigation and Preservation Plan.

Sufficient documentation was received from the applicant to define the subject parcel as a kuleana parcel that was actually used for residential use as identified under §13-5-31, HAR. What the applicant is proposing, a single-family residence is consistent with this nonconforming kuleana land use. The proposal shall meet the Conservation District Single Family Residential Standards. The proposal may encourage development of other lots in the area and this remote location with no services or utilities is not ideal for a residence.

However, pursuant to §13-5-37, HAR Nonconforming uses. (a) This chapter shall not prohibit the continuance of, or repair of non-conforming uses as defined. (b) Any land identified as a kuleana may be put to those uses that were historically, customarily, and actually found on the particular lot including, if applicable, a single-family residence.

RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this application for Kuleana land use and related use consisting of a proposed residence approximately (≈) 2046-ft² with 1403-ft² of interior space utilized as a kitchen, living & dining room, 2 bedrooms and a dressing room and 633-ft² of lanai and porch; a 10,000-gallon catchments water tank, a composting toilet, a 9-ft²-building for generator storage, minimal landscaping and related driveway located at Kalahiki, Kapalilua, South Kona, island of Hawaii, TMKs: (3) 8-6-014:012 and a portion of (3) 8-6-011:003 (driveway) subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR) §11-60.1-33, Fugitive Dust; Chapter 11-46, Community Noise Control; and Chapter 11-62, Wastewater;
- 4) The single-family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;
- 5) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit
- 6) The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
- 7) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan

- approval by the Chairperson does not constitute approval required from other agencies;
- 8) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
 - 9) The applicant will minimize visual impacts using appropriate house color and landscaping;
 - 10) The applicant shall obtain all applicable permits from Hawaii County prior to construction. As applicable, the applicant shall obtain a County of Hawaii Building and Grading Permit;
 - 11) The applicant shall notify the Office of Conservation and Coastal Lands (OCCL) in writing prior to the initiation and upon completion of the project;
 - 12) Artificial light from exterior lighting fixtures, including but not necessarily limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposed shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to §205A-71, HRS. No outdoor lighting shall be directed towards the sea;
 - 13) The applicant/landowner shall execute a waiver and indemnity prior to submitting construction plans for approval that is satisfactory to the Department;
 - 14) No shoreline hardening, sandbags or other structures shall be allowed to artificially fix the shoreline for the life of the structure;
 - 15) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
 - 16) Archeological monitoring shall be conducted during construction activities in accordance with an approved Archaeological Mitigation and Preservation Plan by SHPD;
 - 17) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (808-692-8015), which will assess the

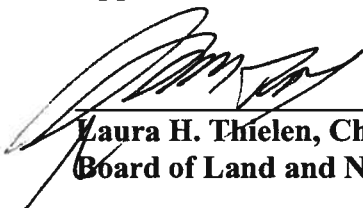
- significance of the find and recommend an appropriate mitigation measure, if necessary;
- 18) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
 - 19) Potable water supply and sanitation facilities shall have the approval of the appropriate agencies;
 - 20) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
 - 21) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
 - 22) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the environment;
 - 23) The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules (Title 13-5);
 - 24) Other terms and conditions as may be prescribed by the Chairperson; and
 - 25) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Land

Approved for submittal:



Laura H. Thielen, Chairperson
Board of Land and Natural Resources

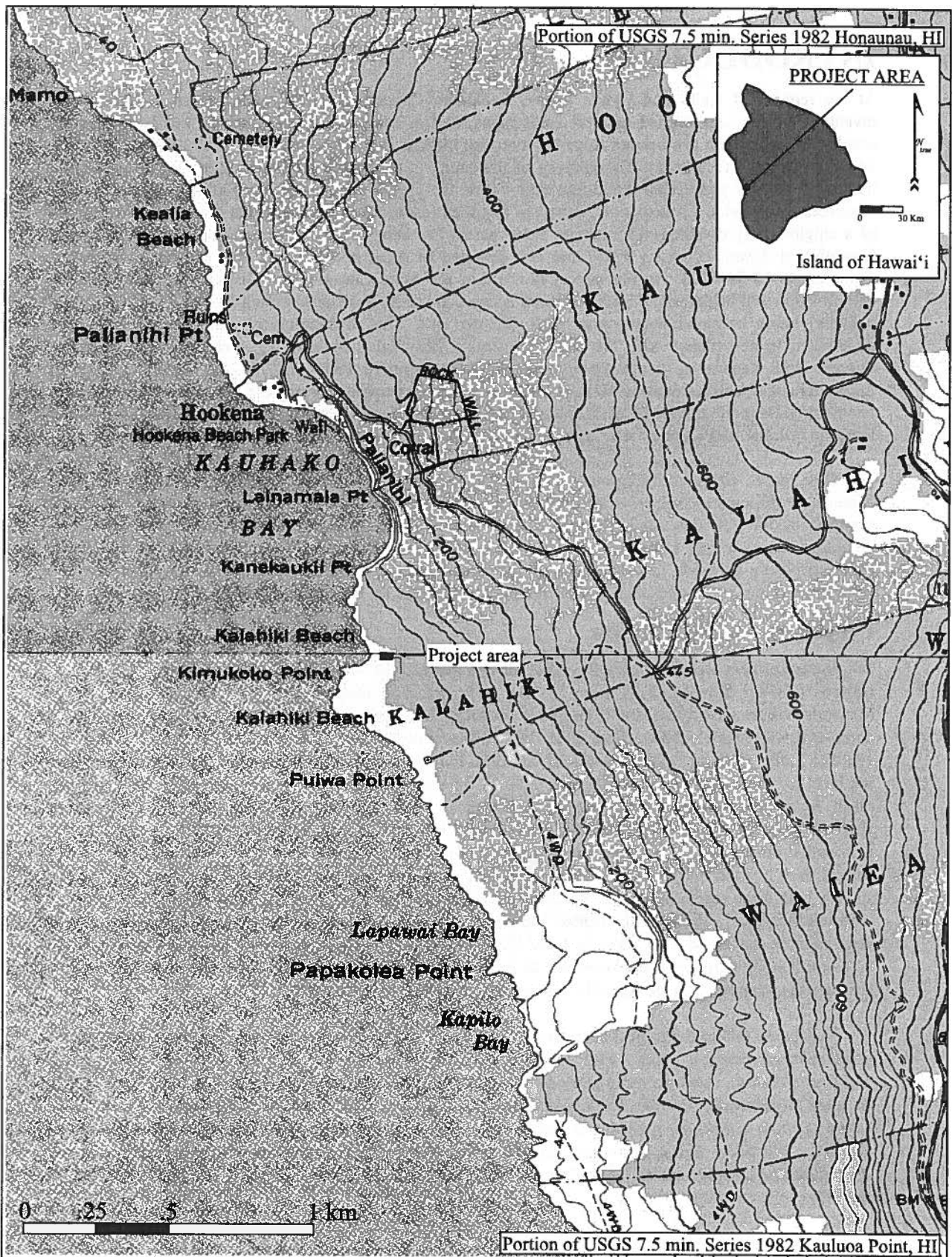


Figure 1. Project area location.

HELU 26/76

011

PALAPALA SILA NUI.

A KE ALII, MAMULI O KA OLELO A KA POE HOONA KULEANA.

NO KA MEA, Ua hoobolo na Luna Hoona i na kumu kuleana aia i ka olelo, he kuleana oiaio ko Anae Kuleana Helu 9/15/6

Nolaila, ma kela Palapala Sila Nui, ke hoike aku nei o Kamehameha IV. ke Alii nui a ke Akua i kona lokomaikai i hoouho ai maluna o ko Hawaii Pae Aina, i na kanaka a pau, i keia la nona iho, a no kona mau hope alii, ua hawii aku oia ma ko Anae Alodie ia Anae

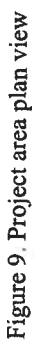
i kela wahi a pau loa na ma ka mokupuni o Hawaii Kaliahiki Kono Pahale. E hooumaaka ma ke kiki Kono oia a e holo Ma 41° 30' N. 153° W. ma ke Alani

82° 30' N. 135° W. ka aina o Waipua
75° 15' N. 137° W. Kanihinu
Ma 5° 150° W. Kahoohikapu
76° 30' N. 163° W. i kahi ihooumaaka ai
a mai laila hiki hou i kahi ihooumaaka ai
to eka

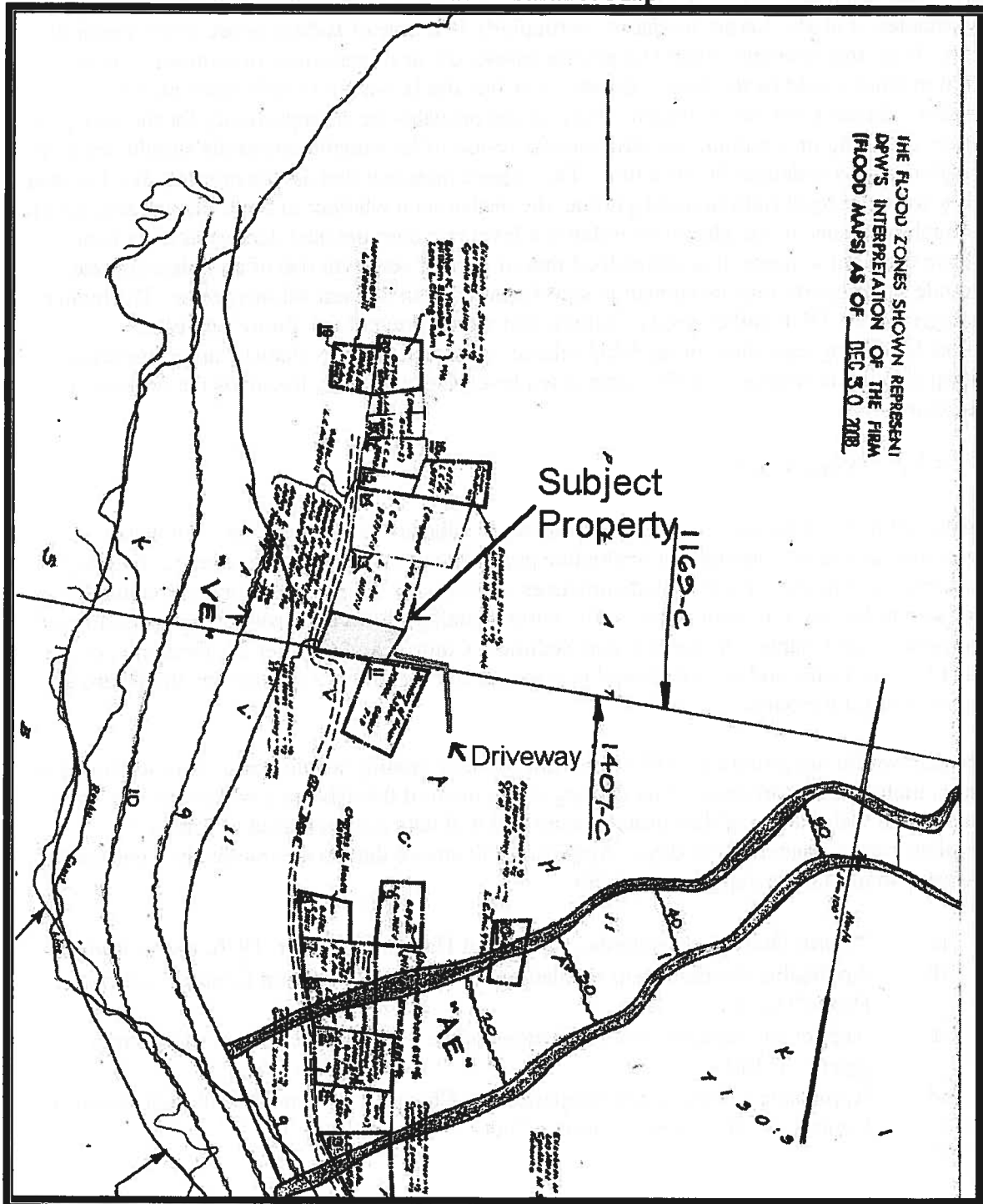
Aina Mahe E hooumaaka ma ke kiki Ma a e holo ana Ma 41° N. 125° W. ma ke aina o Konoohiki Kawaaka

57° 30' N. 240° W.
63° 30' N. 63° W.
Ma 22° 30' N. 218° W. Konoohiki
63° 30' N. 62° W.
74° 30' N. 156° W.
84° 30' N. 350° W. i kahi ihooumaaka ai
to eka

Note: The above description is for L.S. 9576 and entered by mistake in this Patent. See description for the Patent No. 3 page 557 L.C.R. book. J.A. Hillman 11/1/10



Flood Rate Insurance Map



Note: map interpreted on TMK by Hawai'i County Department of Public Works

EXHIBIT 4

Maka



Maka



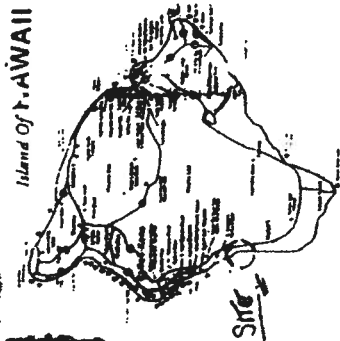
Keith and Cynda Unger Single-Family Dwelling Environmental Assessment



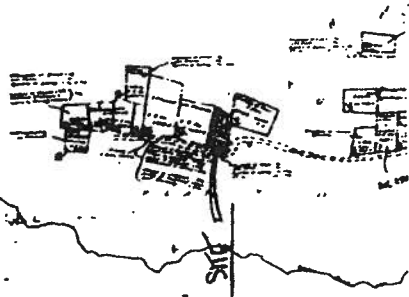
3c View Across Beach/Flat Makai of Property ▲ ▼ 3d House Site and Edge of Shoreline



Island of Hawaii



VICINITY MAP



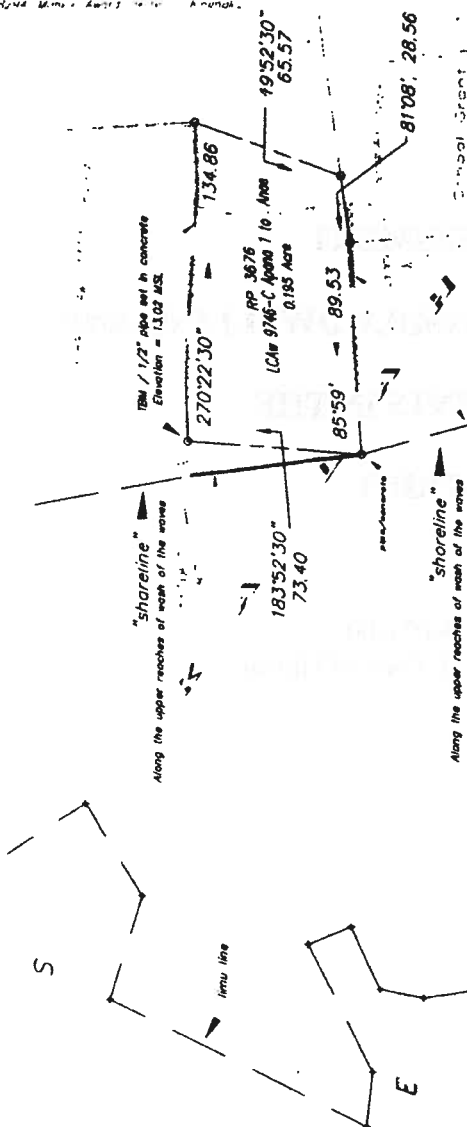
GENERAL LOCATION

NOTE:

McCandless Land and Cattle Company - Owner
PO Box 500
Hanalei, Hawaii 96726
Phone: 328 9313

NOTE:

TBM @ NW corner of RP 3676, LCAW 9746-C Apana 1 to Aanae is referred to USCGS Station "HOOKENA" having an elevation of 5.00 above MSL



The shoreline as delineated in red is hereby certified as the shoreline as of

June 19, 2008

[Signature]
Chairperson, Board of Land and Natural Resources

PLAN SHOWING

SHORELINE ALONG SEAWARD PORTION OF
RP 3676, LCAW 9746-C APANA 1 TO ANAE
AT KALAHIKI, SOUTH KONA, HAWAII

Scale: 1 inch = 50 feet
Tax Map Key: B-6-14: 12 Book: 393

Date: October 5, 2007
Updated on Revised March 24, 2008
L.O.M.: May 5, 2008

From the office of
JOHN D. WEEKS INC.
79-6877 Mamalahoe Highway
Hilo, Hawaii 96725



[Signature]
Blaine W. Ito
Surveyor - No. 3691
Work done by or under the
supervision of the above signed

(10" x 15" = 1.04 SqFt)

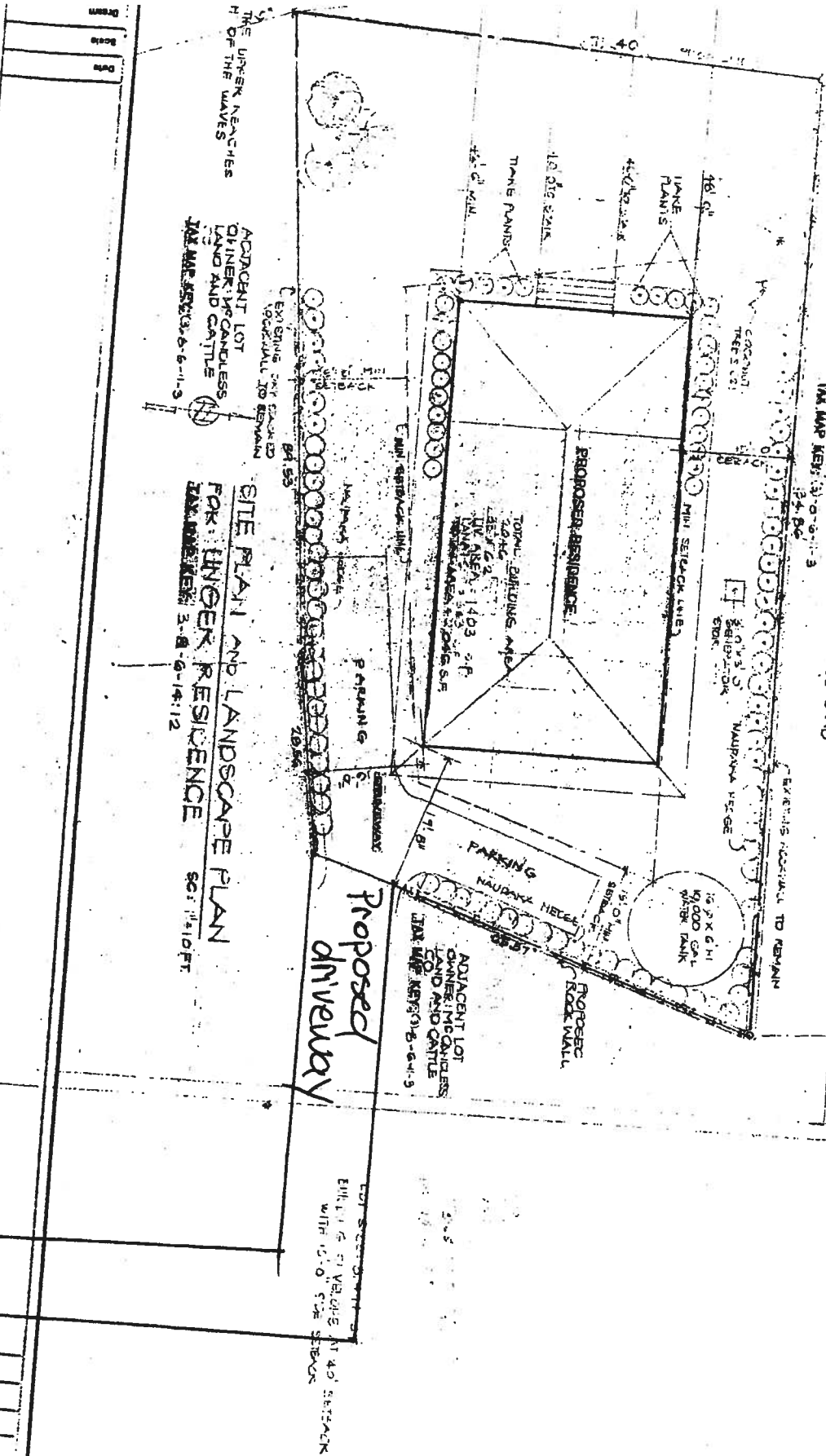


EXHIBIT 8

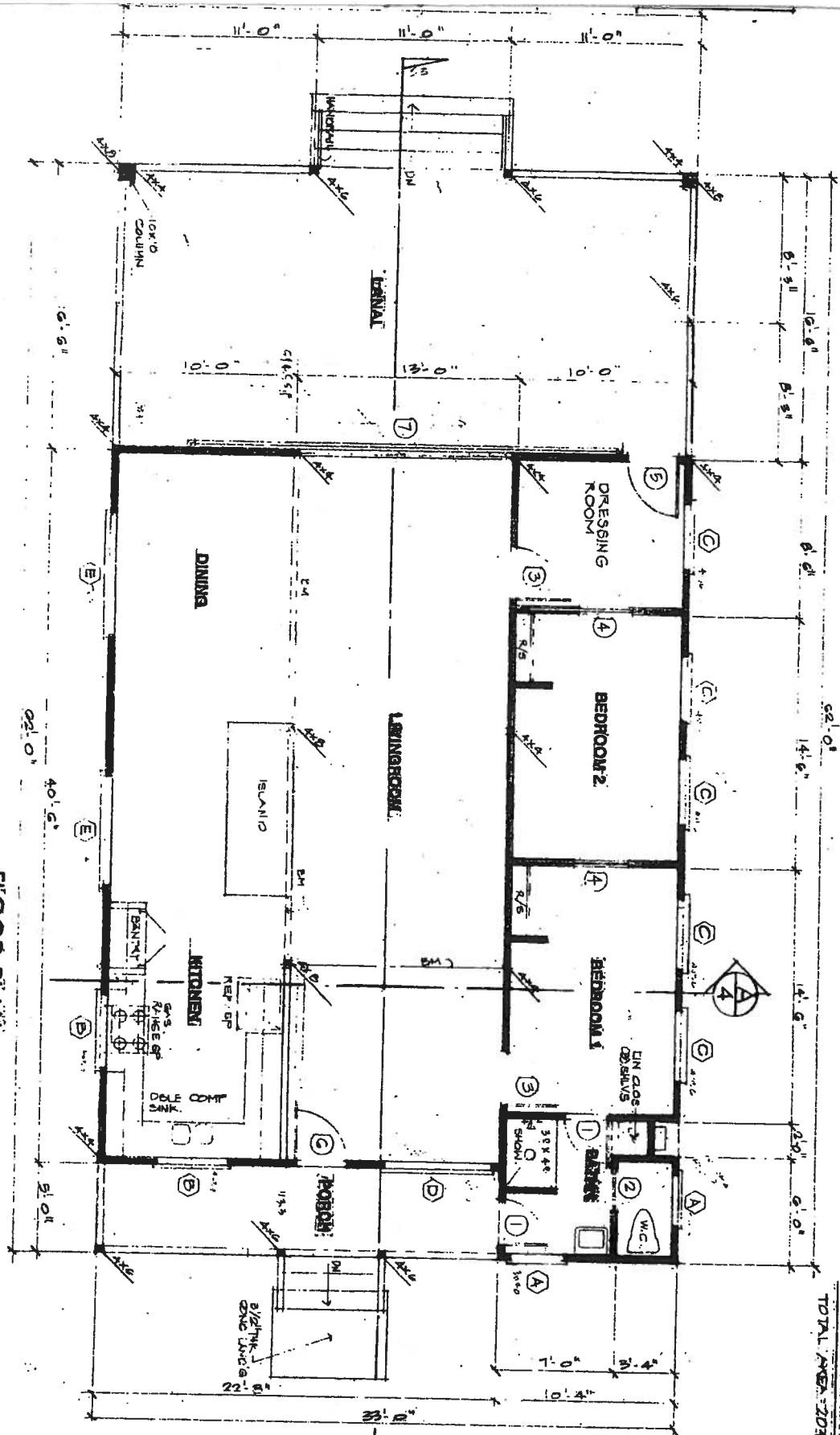
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REVISIONS
BY

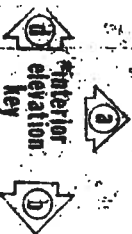
AREA TABULATION

LIVING ROOM, DINING	1485 SF
BEDROOM 1	1435 SF
BEDROOM 2	1495 SF
BATHROOM	209 SF
DRESSING	83 SF
TOTAL AREA	2045 SF

WALL	178 SF (M)
CEILING	2045 SF
FLOOR	2045 SF



FLOOR PLAN
SCALE 1/4" = 1'-0"



FLOOR PLAN
DOOR & WINDOW SCHEDULE
INTERIOR ELEVATIONS

EXHIBIT 9

Sheet	2
Job	
Drawn	
Checked	

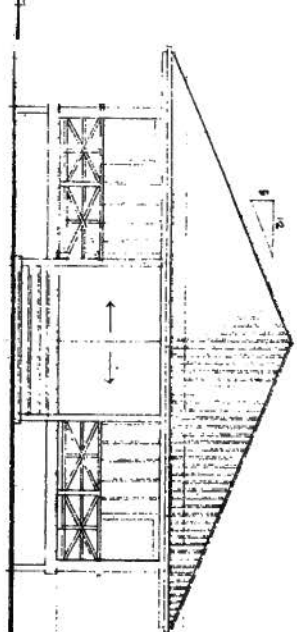
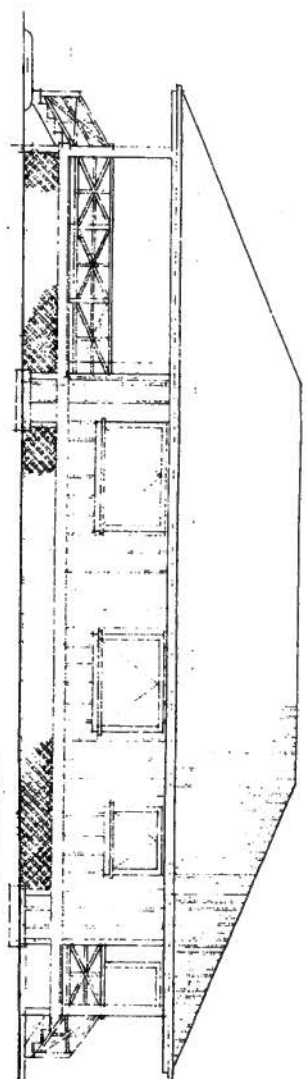
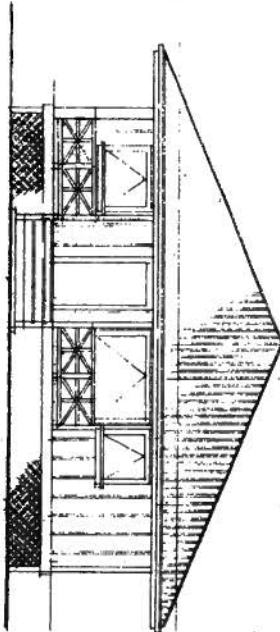
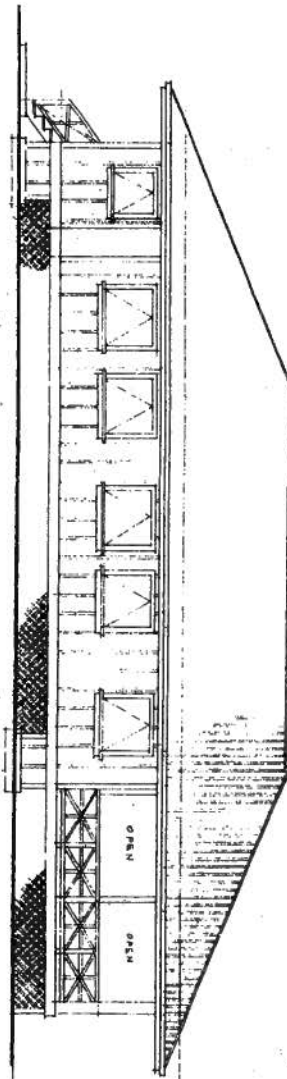
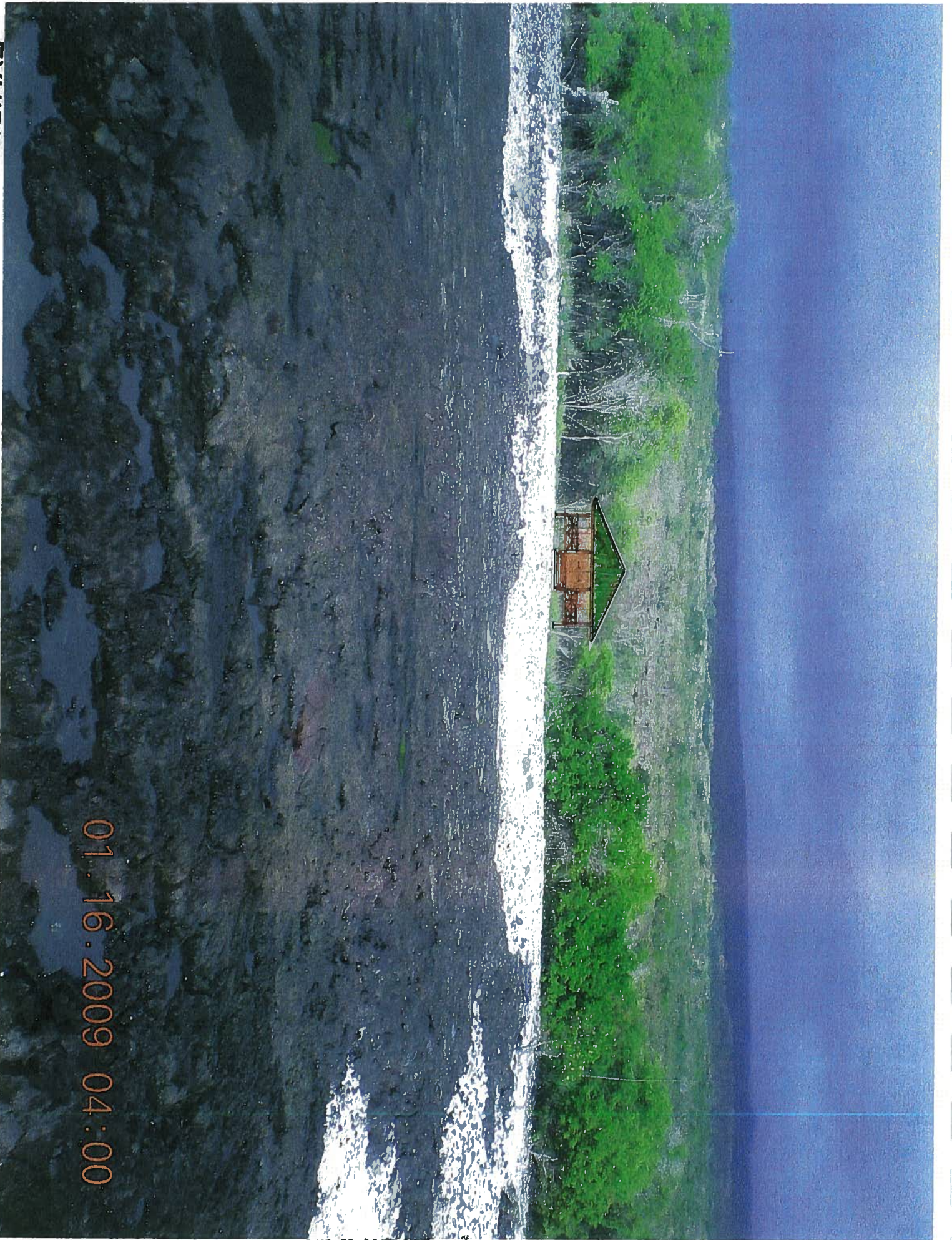


EXHIBIT 11



01.16.2009 04:00

EXHIBIT 1